

SA 13cv700

Doc # 44

SHAVONDA BAILEY, ET AL.
CITY OF SAN ANTONIO, ET AL

GARY HOVERMALE

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHAVONDA BAILEY, as Next Friend)	
of K.A. and P.A.; and VIVIAN)	
LAMPKINS, as Next Friend of J.L.)	
)	
v.)	CIVIL ACTION NO.
)	13-CV-700-FB
CITY OF SAN ANTONIO, TEXAS;)	
NATHAN PRESTON, Individually)	
VIDAL DIAZ, Individually)	
MICHAEL FLETCHER, Individually)	
FRANCISCO GALVAN, Individually)	
MATTHEW FLORES, Individually)	
AUBREY PLAUCHE, Individually)	
MATTHEW QUINTANILLA, Individually)	
ROBERT TAMEZ, Individually;)	
and PAUL TRIGO, Individually)	

ORAL DEPOSITION OF

GARY HOVERMALE

APRIL 10, 2014

ORAL DEPOSITION of GARY HOVERMALE, produced as a witness at the instance of the Defendants Nathan Preston, Vidal Diaz, Michael Fletcher, Francisco Galvan, Matthew Flores, Aubrey Plauché, Matthew Quintanilla, Robert Tamez, and Paul Trigo, and duly sworn, was taken in the above-styled and numbered cause on the 10th day of April, 2014, from 2:00 p.m. to 3:30 p.m., before

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1 Stephanie Clark, CSR in and for the State of Texas,
2 reported by machine shorthand, at the offices of
3 Hoblit Ferguson Darling, LLP, Bank of America Plaza,
4 300 Convent Street, Suite 1450, San Antonio, Texas
5 78205, pursuant to the Federal Rules of Civil Procedure
6 and the provisions stated on the record or attached
7 hereto.

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ALSO PRESENT: Mr. Gary Hovermale, Witness
Ms. Stephanie Clark, RPR, CSR

* * * * *

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1 Q. And how could you tell that he was resisting?

2 A. I could hear them talking. "Get your -- get
3 your arm behind your back. Get your arm behind the
4 back." And they had a tough time with him.

5 Q. And how long, roughly, would you say that you
6 heard them trying -- you heard them attempting to get
7 him handcuffed while he was resisting? How long a
8 period would you say that was?

9 A. At least three to four minutes.

10 Q. Could you see the officers attempting to get
11 his hands behind his back?

12 A. Well, there were quite a few trying to get him
13 to do that. More than likely three or four, probably.

14 Q. Could you hear anything that the suspect was
15 saying?

16 A. At that time I didn't hear him say anything.

17 Q. All right. And of course, you know now that
18 who I've been calling "the suspect" was Pierre
19 Abernathy, correct?

20 A. I didn't know it at the time, sir.

21 Q. Right.

22 A. His mother -- his mother called me and told me
23 that that was her son, that was Pierre. I didn't know
24 who the suspect was.

25 Q. Sure. Sure. But yeah -- and I'm just --

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1 no activity.

2 Q. Okay. And --

3 A. With -- with the suspect.

4 Q. So -- well, can you explain what you mean by
5 that?

6 A. No, I saw -- I saw officers, you know, moving
7 around.

8 Q. Okay.

9 A. But I didn't see any -- any officer went down.
10 He could have, but I didn't see any.

11 Q. All right. So after you believe that the
12 suspect was handcuffed, the activity of the officers
13 kind of came to a halt?

14 A. Yes, sir.

15 Q. Did you hear Mr. Abernathy say anything after
16 he was handcuffed that you can recall?

17 A. No, sir, I didn't.

18 Q. Did you talk to any of the officers that had
19 actually been involved in handcuffing Mr. Abernathy?

20 A. No, sir.

21 Q. Well, you said that you saw Mr. Abernathy
22 later taken out on a stretcher to the ambulance, right?

23 A. Yes, sir. I saw him on the -- when they
24 came -- apparently when they took him out in front of
25 the hedges, then he was laying on the ground, still

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1 Sergeant Williams down the street?

2 A. Yes, I know him, yes, sir. Not real well,
3 but . . .

4 Q. All right. Well, did -- do you recall seeing
5 him out in the cul-de-sac that morning while the
6 officers were dealing with Mr. Abernathy?

7 A. I don't -- I -- I didn't see him.

8 Q. Do you know Mr. Abernathy's younger brother,
9 Lee Griffin?

10 A. Yes.

11 Q. Do you recall seeing him out in the cul-de-sac
12 that morning?

13 A. No, sir.

14 Q. Would it be fair or not to say that most of
15 your attention was focused on what was going on in your
16 front yard?

17 A. Yes, sir.

18 Q. All right. Did you overhear any of the
19 officers say anything to anyone that morning that you
20 thought was inappropriate?

21 A. No, sir.

22 Q. Okay. I think that you went down downtown and
23 gave a statement --

24 A. Yes, sir.

25 Q. -- is that right? And was that -- did you go

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1 hours after this incident would be better than it is
2 today or not?

3 A. My recollection's pretty good.

4 Q. Okay. But I think we -- would you agree or
5 not agree that probably all of us, our memory of what
6 happened two years and eight months ago is not as good
7 as it was five hours after --

8 A. Oh, yes, I -- I agree with that.

9 MR. WILSON: Objection; leading question.

10 MR. RALLS: Actually, it was sort of --
11 it was a bad question.

12 Q. (By Mr. Ralls) Let me rephrase that question.
13 Would you agree with me that your memory five hours
14 after the event would be better than it would two years
15 and eight months after the event as you sit here and
16 testify, or not?

17 A. It's very good.

18 Q. Okay. It would have been better then, at the
19 time you gave this statement, or not?

20 A. More than likely, yes.

21 Q. Okay. All right. In this statement, you say
22 that -- you actually say: I saw four to six police
23 officers wrestling him.

24 A. Yes, sir.

25 Q. And is that "him" referring to --

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1 A. Suspect.

2 Q. And the suspect is --

3 A. Pierre.

4 Q. So did you actually see them wrestling with
5 him?

6 A. Yeah. He was -- he was resisting quite heavy
7 and from what I -- I would assume that was wrestling.

8 Q. And then did they -- if you look at the
9 next -- why don't you take a look at the next sentence,
10 where it says: They were already on the ground with him
11 and tearing up my flowerbed?

12 A. Yeah. Okay.

13 Q. What happened to your flowerbed as they were
14 rolling around in it?

15 A. Well, with the activity they were doing, I
16 mean, they were coming from the left side and the right
17 side, my flowerbed was -- quite a bit of plants there
18 and they just tore them up. Tore up the hedge and
19 everything.

20 Q. And then you state that: They looked like
21 they were having a difficult time with him and they were
22 saying, "Put your arms behind your back. Put your arms
23 behind your back." And he was resisting.

24 Is that correct?

25 A. Yes, sir.

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1 Q. And then you state that: I saw several
2 officers pulling on his arms, trying to get them behind
3 his back to handcuff him.

4 A. Yes, sir.

5 Q. (Reading.) And they were having a hard time
6 restraining him.

7 Is all of that -- first of all, did I
8 read it correctly?

9 A. Yes, sir.

10 Q. And second of all; is that correct?

11 A. Yes, sir.

12 Q. That's what you were able to see that morning?

13 A. Yes, sir.

14 Q. And you say that it appeared to you that he
15 was resisting arrest, correct?

16 A. Yes, sir.

17 Q. Now, when you say it appeared to you that he
18 was resisting arrest, can you tell us in your words what
19 you saw that made you think that?

20 A. Yes, sir. The officer was trying to get his
21 right arm behind his back and he appeared to be very
22 strong at the time and they had a very difficult time
23 getting his arm behind his back. It took, like I said,
24 maybe three or four minutes to do that. He -- very,
25 very strong.

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CHANGES AND SIGNATURE

WITNESS: GARY HOVERMALE DATE OF DEPOSITION: 4-10-14

PAGE LINE CHANGE REASON

8	7	Add career before your complete sentence	
9	13	Removed was after I	Correct sentence
9-	1	Remove what's 73 and 2009	Repeat Information
10-9		Remove downtown	Incorrect location
10	13	Remove stairs and place with side	Correct word
11	1	Remove front after taking	Repeated Information
15	9	Remove he before was	Repeat Information
15-13		Remove I before had	Repeat Info
15	17	Remove the before my	Correct sentence
17	24	Adding to resist	Correct word
19-	6	I saw	Stated Twice
19	9	Remove any	Stated Twice
19	9	change went to go	Correct word
19	23	add ground after the	Complete missing word
24	18	Remove I lived there since 1994	Corrected sentence
24	19	Remove now that Remove was after one	Correct sentence
25	11	add knew after he	Corrected sentence
28	3	remove you know	Corrected sentence
28-12		remove alot	Repeated words
29-24		remove any	Repeated words
30-23		remove I	Repeated words
30-24		add know after don't	Missing word

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1

CHANGES AND SIGNATURE

2

WITNESS: GARY HOVERMALE

DATE OF DEPOSITION: 4-10-14

3

PAGE

LINE

CHANGE

REASON

4

31 13 In front of Repeat Information

5

31 18 Add were in front of in missing word

6

32 12 My after no

7

32 17 Remove a after gave Repeat Information

8

39 9 Remove He after he Repeat Information

9

39 18 Remove than before than Repeat Information

10

39 22 Remove that after thought Repeat Information

11

40 - 1 That he saw that he saw Repeat Information

12

40 18 Remove fourth place to third correction

13

41 25 Remove that after her Repeat Information

14

42 4 Remove and I brought Repeat Information

15

42 10-11 These after then

16

42-11 Add view after complete missing word

17

42 11 Remove then there and in Repeat Information

18

42 12 Change delete when replace with where Change or

19

42-13 Remove I and replace with or Replace Word

20

42 19 Remove I didn't even the hearing was deleted

21

43 1 Remove When you're like Repeated Information

22

43-2 Remove I Repeat Info

23

46 18 Add put in remove the Add words for clarity

24

55-9 Remove that wasn't Repeating Information

25

55-10 Remove I after see Repeated Info

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CHANGES AND SIGNATURE

WITNESS: GARY HOVERMALE DATE OF DEPOSITION: 4-10-14

PAGE LINE CHANGE REASON

58 7 Remove I after what Repeated Info
59 24 Place was after he Completed missing info
62 19 Remove and the I Clear sentence
63 8 Remove IT Clear sentence
63 11 Remove he after he Reported Info
64 11 Remove he after that Repeated Info
64 21 Remove you've had Repeated Info

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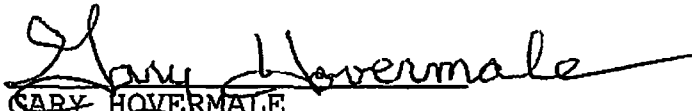
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1 I, GARY HOVERMALE, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

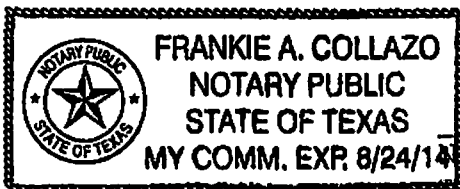
4 
5 GARY HOVERMALE
6

7 THE STATE OF Texas)

8 COUNTY OF Bexar)

9 Before me, Frankie Collazo, on this
10 day personally appeared GARY HOVERMALE, known to me (or
11 proved to me under oath or through TR DL)
12 (description of identity card or other document) to be
13 the person whose name is subscribed to the foregoing
14 instrument and acknowledged to me that they executed the
15 same for the purposes and consideration therein
16 expressed.

17 Given under my hand and seal of office
18 this 23rd day of May, 2014 .
19



21 
22 NOTARY PUBLIC IN AND FOR
23 THE STATE OF Texas

24 My commission expires: 08/24/14

25 No Changes Made Amendment Sheet(s) Attached

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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13-CV-700-FB

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AUBREY PLAUCHE, Individually)
MATTHEW QUINTANILLA, Individually)
ROBERT TAMEZ, Individually;)
and PAUL TRIGO, Individually)

REPORTER'S CERTIFICATE
DEPOSITION OF GARY HOVERMALE
APRIL 10, 2014

I, Stephanie Clark, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, GARY HOVERMALE, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition was delivered to

Mr. Gary Hovermale.

I further certify that pursuant to FRCP Rule
30(f)(1) that the signature of the deponent was
requested by the deponent or a party before the

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1 completion of the deposition and that the signature is
2 to be before any notary public and returned within 30
3 days from date of receipt of the transcript. If
4 returned, the attached Changes and Signature Page
5 contains any changes and the reasons therefor;

6 That the amount of time used by each party at the
7 deposition is as follows:

8 Mr. Robert Wilson - 0:35
9 Mr. N. Mark Ralls - 0:49
10 Mr. Brad Bennett - 0:00

11 I further certify that I am neither counsel for,
12 related to, nor employed by any of the parties or
13 attorneys in the action in which this proceeding was
14 taken, and further that I am not financially or
15 otherwise interested in the outcome of the action.

16 Certified by me this 21st day of April, 2014

17 *Stephanie Clark*



18 STEPHANIE CLARK, RPR, Texas CSR
19 Expiration Date: 12-31-15
20 Gulfstream Court Reporting, LLC
21 Firm Registration No. 245
22 16607 Blanco Road, Suite 1307
23 San Antonio, TX 78232
24 210.490.6444 - 713.354.2339
25

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1 COUNTY OF BEXAR)

2 STATE OF TEXAS)

3 I hereby certify that the witness was notified on
4 April 21, 2014 that the witness has 30 days after being
5 notified by the officer that the transcript is available
6 for review by the witness and if there are changes in
7 the form or substance to be made, then the witness shall
8 sign a statement reciting such changes and the reasons
9 given by the witness for making them;

10 That the witness' signature (X) was () was not
11 returned as of May 27, 2014.

12 Subscribed and sworn to this 9 day of
13 June, 2014.

14

15

16

17

18

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24

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Stephanie Clark
Stephanie Clark, RPR, Texas CSR
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